**U.S. Citizenship
and Immigration
Services**

In Re: 7746678

Date: MAR. 10, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a social entrepreneur specializing in data analytics, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

---

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).
[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.[4] The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was pursuing a Master of Science degree in Data Analytics from [   ] University.[5] In addition, she was working as a data scientist intern with [   ] a media and entertainment company.[6]

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that she intends "to apply the knowledge and skill sets gained from my advanced degrees in data science and business into launching my start-up, [   ] The mission of [   ] is to develop data driven technological solutions to solve social problems such as learning difficulties . . . ." She asserted that her proposed undertaking involves creating "an adaptive learning platform for early learning, which customizes and individualizes the learning content to the learning rate of each child." The Petitioner further explained that her proposed work is aimed at "development of an interactive learning platform that utilizes machine learning to determine the cognitive difficulties of students, with the goal of providing learning speed and content tailored products to suit individual learning disabilities of students." She stated that her "adaptive learning system" individualizes educational content to the learning abilities of each student "by applying algorithms to the educational platform." In addition to lesson and test sections, the Petitioner noted that her learning platform will include programming that ensures students "keep repeating lessons until they are able to pass" and that calculates each "child's learning rate."

The record includes articles discussing the favorable job outlook for computer and information research scientists and data scientists. In addition, the Petitioner offered reports describing challenges facing the U.S. education system including inadequate access to technology and income-related student achievement gaps. She also provided articles about innovations in education technology, the role of artificial intelligence in education, and social entrepreneurship. Furthermore, the Petitioner

---

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Petitioner received a Master of Social Entrepreneurship degree from [   ] Business School (August 2015).

[5] In response to the Director's request for evidence, the Petitioner provided a December 2018 letter from [   ] University indicating that she earned this degree in May 2018.

[6] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

submitted a fact sheet for former "President Obama's Plan for Early Education for All Americans," two proclamations from President Trump relating to American Education Week, and information from the U.S. Department of Education and the World Bank about initiatives to promote early childhood education and the positive effects of technology on classrooms and students. The record therefore supports the Director's determination that the Petitioner's endeavor has substantial merit.

In denying the petition, the Director concluded that the Petitioner had not shown that the potential prospective impact of her proposed endeavor rises to the level of national importance. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

On appeal, the Petitioner argues that her proposed endeavor to create an adaptive learning platform stands to affect economically depressed regions in the United States and has the potential to create jobs for U.S. workers. She contends that her business plan and the description of her endeavor supports Presidential proclamations and initiatives of the U.S. Department of Education.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's statements and business plan reflect her intention to provide a valuable learning platform for children, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance.[7] In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her learning platform's subscribers and customers to impact her field or the U.S. education system more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. For example, the Petitioner has not offered sufficient evidence that the area in [   ] where [   ] will be located is economically depressed, that she would employ

---

[7] The issue here is not the broader implications of educational initiatives recommended by the President and U.S. Department of Education, but rather whether the specific learning platform proposed by the Petitioner offers educational or economic implications at a level sufficient to establish the national importance of her endeavor.

a significant workforce in that area, or that her project would offer the city or its population a substantial economic benefit through either its employment level or virtual product sales. The record does not adequately show that benefits to the U.S. regional or national economy resulting from the Petitioner's project would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Without sufficient documentary evidence of its broader impact, her proposed endeavor does not meet the "national importance" element of the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of her curriculum vitae, academic credentials, "Social Entrepreneur Scholarship" in the amount of $3,000 to attend [   ] Business School, professional certifications, Sigma Xi membership, [   ] business plan, and Memorandum(s) of Understanding with two daycare providers outlining the terms of use for her adaptive learning platform. The Petitioner also offered evidence indicating that she started a fashion design business in Nigeria, a '[   ] [   ] small business start-up grant, three endorsements relating to a fashion show her company organized, and two reference letters from her professors at [   ] University discussing her graduate work.

In addition to noting that the Petitioner "did well in both courses" he taught, [   ] professor of computer and information science at [   ] University, stated that the Petitioner began "development of an interactive learning platform that utilizes machine learning to help determine the learning difficulties of students" while attending [   ] Business School. [   ] explained that the Petitioner's platform provides information that "can help revise the learning content and speed in the intervention if necessary," but he does not offer specific examples indicating that her platform has served as an impetus for progress in the field, that it has improved student performance in any school districts, or that it has generated substantial positive discourse in the academic community.

With regard to the Petitioner's work in his "Data Mining" class, [   ] associate professor at [   ] University, discussed the Petitioner's project using "Twitter data from [   ] to build predictive models to identify the geographic location of slums and those people living in slums." [   ] indicated that "[t]his work was particularly notable in the way that it combined unsupervised and supervised machine learning methods," but the record does not show that the predictive models built by the Petitioner have been implemented, utilized, or applauded by others in her field.

Furthermore, while the Petitioner's Master of Social Entrepreneurship degree renders her eligible for the underlying EB-2 visa classification, her academic accomplishments by themselves are not sufficient to demonstrate that she is well positioned to advance her proposed endeavor. We note that she earned her Master of Science degree in Data Analytics (2018) and Sigma Xi membership (2019) after filing the petition. Eligibility, however, must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). In addition, the Petitioner did not offer the criteria for receiving her Social Entrepreneur Scholarship. Nonetheless, she has not demonstrated that her academic credentials, professional certifications, and Sigma Xi membership represent a record of success in her field or are otherwise an

indication that she is well positioned to advance her proposed company or its development of an interactive learning platform.

Regarding the documentation showing that the Petitioner started a fashion design business in Nigeria [   ], her [   ] small business start-up grant, and the three endorsements she received relating to a fashion show her company organized, this evidence is not sufficient to demonstrate that she had a record of success in running her business or in the fashion design industry.[8] Nor does the evidence show that her past experience in fashion design renders her well positioned to advance her proposed endeavor aimed at developing an adaptive learning platform.

With respect to Petitioner's proposed start-up [   ] and its development of an adaptive learning platform, she offered a detailed business plan that included market analyses, financial forecasts and projections, company milestones, and funding sources. Although her business plan lists year one milestones such as securing research endorsements, having a fully functional prototype, securing start-up funding, and exceeding one million dollars in sales revenue, the Petitioner has not demonstrated progress towards achieving these milestones. For example, the record does not show that she has secured start-up funding from the organizations identified in her business plan.[9] Furthermore, while her evidence includes Memorandum(s) of Understanding with two daycare providers outlining the terms of use for the adaptive learning platform "being created by [the Petitioner]," she has not demonstrated that a prototype of her platform has been deployed and has improved student performance. In addition, the Petitioner has not shown that her platform stands to be utilized beyond these two daycare providers.

The record does not reflect sufficient interest from potential customers, users, investors, or other relevant entities or individuals to demonstrate that the Petitioner is well positioned to advance her proposed company and its development of an adaptive learning platform. Nor does the evidence show that the Petitioner's track record of running a fashion design business in Nigeria, business plan for future activities, and progress towards achieving her company's goals rise to the level of rendering her well positioned to advance the proposed endeavor. For these reasons, she has not established that she satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that she is eligible for a waiver due to potential job creation resulting from her business, her endeavor's contribution to solving our nation's education problems, and the importance of her field. She also maintains that there is a labor shortage of qualified computer and information research scientists.[10] However, as the Petitioner has not established the national

---

[8] For instance, the Petitioner did not provide tax returns or audited financial statements for her Nigerian company from the time period she worked there (2012-2014) as evidence of her business's success.

[9] The Petitioner's business plan listed National Center for Educational Research, Caplan Foundation for Early Childhood, Annenberg Foundation, and American Honda Foundation as possible funding sources.

[10] We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

importance of her proposed endeavor and that she is well positioned to advance that endeavor as required by the first and second prongs of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first and second prongs of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.